

The holding companies in the Iranian legal system

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ABSTRACT

Objective: Holding company is a special form of major business in which the parent company, owning all or part of the shares of some subsidiary at its disposal, and because the right to vote, to be able to exercise control and strategic management subsidiary. **Methodology:** In Iran, because of the lack of comprehensive rules and regulations about financial groups, including the holding of these companies still have not achieved the actual position. **Results:** Among our trade laws, the Securities Market Act, which is referred to these companies. Given the importance of the issue, in this study, after describing the legal definition in the holding company, has been explained requirements and legal environment for the activities of holding companies and holding companies permission from the Securities and Exchange Brokers Association in the country. The study was descriptive and documentary methods used in gathering resources and documentation is taken. **Conclusion:** By studying this article will be clear that the lack of legal status has led to the holding of the holding company do not have a clear identity.

1. Introduction

Holding, a company that aims to control and manage the subsidiaries, the acquisition is part of the shares of one or more companies. In fact, Subsidiaries are in fact the same companies and unites that deal directly with the customer and to produce and deliver goods and services involved (Zendedel and Zahedi, 2007). This company undertakes planning and management of the group companies and supports them to create synergy, enhance profit. Holding companies have a long history in the business world and play a major role in the national economy (Sadri and Moazzenzade, 2014). The progress of developed countries, the creation and operation of advanced companies. In other word, advanced companies reached the country to progress. In these countries, usually after creating new devices, they also passed and implemented laws and regulations. Now in Iran, there are many holding company and because some reason, such as a state executive body and privatization, is growing; But the problem is that in our country there is no holding law and because there is no law to govern the holding, they are managed within the framework of the Commercial Code. While the country's trade law approved in 1928 and entered into force since 1932 and in the section on significant reforms were applied to companies in 1968, but nothing mentioned about holding companies in this corrigendum also. However, in countries with advanced business space commercial law is constantly reviewed and revised. The companies have a special place in Iranian commercial law (Kabasakal and Bodur, 2002).

Holding is also a kind of company but it is not specified the definition and the place of holding company in Iranian commercial law. Of course, in the Third Development Plan, in Article "4" discussion raised holding companies, and thus the duty of the legislator was created for the first time in this type of company (the Third Development Plan for Economic, Social and Cultural Islamic Republic of Iran, 2000). Companies mentioned in this law, equal to public holding and cause them to return to the issue of privatization and requires all state-owned enterprises subject to privatization referred to the parent company specialized in the relevant fields and then to be transferred to the private sector (Khan and Mirakhor, 1990).

So, holding companies are holding temporary that have been created with the aim of accelerating the privatization process. In exchange's law and regulation also been mentioned that are for exchange's domestic use (Hanafizadeh and Shafiei Nikabadi, 2011).

Now the question is what is the legal nature of the holding company?

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what legal documentation is required for the establishment and operation of licensing holding company? What is the organization for the establishment and administration of holding companies? What are the legal obstacles facing the holding companies? The prerequisite for success in the capital markets to invest is having enough knowledge and experience in understanding and evaluating the effects and consequence of macro policies capital market low on each group of industries and companies and the company's profitability (Ahmad, 1994). Lack of attention to this issue causes that a natural or legal person doesn't possess the above capacity, enter into direct way in the market, wouldn't be a right choice for him. One of the specialized institutions of the capital market, are Holding companies which have a special ability to invest in the securities market. In the internal research, given the novelty One 06 the specialized institutions of the capital market, are Holding companies which have a special ability to invest in the securities market. In the internal research, given the novelty of the subject, little research has been done in connection with the Holdings country. But none of them is about the place of Holding companies in Iranian legal system (Yurtoglu, 2003).

2. Materials and methods

2.1 Definition of words and phrases

2.1.1 Definition of technical terms of Holdings.

Significant influence: The ability to participate in decisions related to the operational and financial policies of an entity, but not in the control of those policies. Significant influence, usually through select at least one member of the board of directors (or similar governing other organs) are carried out, but may be caused by a single investor relations or other contracts to participate effectively in the policy. Paragraph 3 of Article 1 of the Statute [parent company / holding company]

Control: The ability to conduct financial policies and operating a legal person, in order to obtain the benefits from its activities. The ability to control measures determined in accordance with national accounting standards. Paragraph 4 of Article 1 of the Statute [parent company / holding company]

Group: Includes the main unit and all its subsidiaries (Gibson, 2000).

According to the statutes of holding companies, subsidiaries, is a company whose shares are owned holding company is at any rate and a subsidiary company of more than 50 percent of its shares are owned holding company, subsidiary, called.

Subsidiary: It is noteworthy that the statutes of holding companies, subsidiaries with the concept that in a decision dated 1380/5/20 The Council of Ministers used does not match, but what is in the bill, as mentioned subsidiaries, the statutes of holding companies, as subsidiaries, is determined. In other words, the Act 1380/5/20 governmental companies, as subsidiaries, are considered 1380/5/20 approval of state-owned enterprises are considered as subsidiaries But in the Statute of the governmental companies, subsidiaries, are considered (Van Harten and Loughlin, 2006).

2.2 Legal definition of Holding companies

If more than 50% of the assets of a legal person that is dedicated to securities, stocks, shares or units of an investment company, organization or fund, is invested. Whereby this investment, legal person, alone or together with persons under their control in the company, institution or invested funds, have significant influence or control earned it, The legal person, as a parent company (holding), is considered (the instructions in "identification and registration of financial institutions operating in the securities market to the Stock").

-A company with investments in investee companies, in order to earn profit, so that to control the operation of the franchise business, can choose the board of directors or in the selection of board members to be effective (Securities Market Act of the Islamic Republic of Iran, 2005).

Based on common definitions, holding companies, the bulk of their income, investment income is and Usually, directly, to produce goods or provide services do not pay, but parent companies, not only, guide and control the subsidiaries but they themselves are involved in the production or provision of services.

DBRS institution in your manual, regarding the ranking of holding companies, the difference between holding company and the parent company has made and states that the terms of both the holding company and the parent company are the same. (Sourial, 2004) The difference is that a holding company, typically, does not work and only to investments in subsidiaries to be formed. while a mother company may pay to other activities such as the production activities or the provision of services in addition to investment and to maintenance of stock subsidiaries, but in the securities market Act that has been defined the holding and the mother company, there is no distinguish between Holding company and mother company and accordingly, the companies that are holding are called mother company, too.

Many companies such as Iran Khodro, Saipa and Mapna are called Holding while these companies are mother company according to definition. Of course, as mentioned in the Securities Market Act and holding parent companies have the same definition. So instead of using Iran's financial literature titles such as holding or parent company for such companies Group companies are told, for example Iran Khodro Industrial Group.

2.3 The advantages of investment in Holding companies

One of the largest and most successful Holding companies in America Berkshire Hathaway company which its ownership is with warren Buffett who is a famous billionaire American. Holding company is a legal or real person who is the owner of major stock of some other companies. This structure release risks in ownership and controlling of several companies simultaneously (Khan and Mirakhor, 1986). In this situation, holding company can have good benefits such as tax exemption based on the percentage of ownership and also voting right and earned value of the company. (Huston, 2000, translation Anthology, 2015) Investment in a Holding company can be studied from several aspects.

1. Observing the principle of diversity in investment.

Raising capital towards investment holding companies will be created diversity. One of these days, experts strongly recommend having variations in capital investment. They believe that having a diversity of investment is less risky than outright capital. Variations in the capital also increases the possibility of higher investments (Atabaki, 2005).

2. Guarantee the repayment of loans to subsidiaries

If a holding company to receive a loan can be repaid using capital guarantee subsidiaries. As a result, its subsidiaries and their capital put holding company in a position that could even in case of bankruptcy to stand again because if bankruptcy occurs, the company placed in the first day started, is not lower than that.

3. Integration policies

Another goodness of Holding company is that there is no sign of cumbersome policies. This means that the companies can consider the same policies for all collections under auspices and smaller companies that have, without wanting to interfere in the management of individual subsidiaries managers.

4. The Holding company isn't manufacturer or service.

Holding companies generally do not produce a product or provide a service. These types of companies are only a means to an impressive stock of other companies so the hassles of production or services, less is gripped investors in these companies.

5. Less risk of holding companies than other firms.

One of the outstanding merits of this type of company is that holding less than other companies face with common risk investments. The only risk of this type of company is the capital that has been invested in it, and may not be returned for any reason.

6. Sharing the fame and reputation of subsidiaries

Holding companies have an another great pleasure. They can participate easily in fame and the reputation of its subsidiaries and benefit of its profit. While they are safe from the dangers that lie in wait for these companies, Risks of legal issues, tax liabilities and lawsuits if swiped subsidiaries, holding company is not damaging.

3. Discussion and results

3.1 Stock exchange

One way of financing, in order to expand investment in the holding company, the exchange is done. (Atabaki, 2005)

Stock Exchange is an official market which it is traded a variety of securities like stocks, bonds and participation under certain rules and regulation. The essential characteristic of a stock exchange is legal protection of owners of savings and regulatory requirements for capital seekers. Stock importance is such that most reputable manufacturing and services companies ranging from large, medium and small are present in certain segments is allocated to them on the exchange. Listed on the exchange, now, not only to use its monopoly but a way to gain credibility and recognition to national and even global. However, most of the major companies in various stock exchanges of the world, to offer their own stock. Now in industrialized countries around fifty percent and in developing countries around twenty-five percent of new investment funding provided through the mechanism of the Securities and Exchange. So, from an economic perspective, the stock exchange is very important in the process of developing the national economy. In other words, the activity and the importance of the Stock Exchange with the development of the national economy is in line interfaces. In fact, the role of Stock Exchange to collecting unproductive liquidity and direct wanderer saving resources to the cost of investment and financing the productive economic activities and people's participation in the national development, open the fundamental principles of ownership, stop capital flight and expanding underground economy, attracting foreign capital, reduce the pressure budget deficit and Contribute to economic growth, is undeniable.

Objectives that holding organization continues in the development mechanism stock exchange are as follow: (Atabaki, 2005).

1. Acceptance of its subsidiaries or sometimes holding company in the Stock Exchange.
2. Maintain and optimize the intrinsic value of the stock of the Holding.
3. . Optimizing the portfolio according to strategic assessments and the opportunities and threats identified
4. Access to cheap domestic and foreign financial resources.
5. Increase revenue through the creation of added value in the non-manufacturing activities.
6. The absorption of investments in the direction of new and advanced and value added activities.
7. Increase the return on available capital.
8. Ease in entry or exit of certain business activities, according to the strategies adopted.

Thus, the stock market is one of the most powerful and efficient tools for the mission of a holding organization in the field of investment and its financing is needed and if managed correctly and used can be have significant economic benefits for the holding. (Atabaki, 2005)

3.2 The rules and regulations in the process of holding:

If the establishment and operation of the applicant is subject to specific rules or legal authorization, the applicant shall also comply with the provisions of this Directive, also comply with the above. Article 8, the direction of stock exchange acceptance in Tehran. Exchange shall after the entry into force of this Directive at the end of Persian date Ordibehesht 87, take action to classification of accepted now available companies on the basis of the provisions of this Directive. Article 54 Exchange acceptance instructions in Tehran Stock Exchange.

3.2.1 Dedicated Customer acceptance of holding companies

- 1- During the reception and insertion and until the company is included in the list of exchange rates, Always at least 80% of the company's financial resources to invest in enterprises, the Central Bank of the Islamic Republic of Iran bonds and bonds of listed companies on the stock exchange and bank deposits is allocated. Appendix 4 of Article 3 of acceptance instructions in Tehran stock exchange.
- 2- Classification of holding companies, after accepting the exchange, upon classification criteria listed companies in Tehran Stock Exchange (ISIC) 1, will be carried out.

3.2.2 General conditions

- 1- Buy movable and immovable property used exclusively for current and not intended to sell, in the ordinary needs is permitted in investment companies and holding companies and these companies can't participate in buying and selling goods intended to benefit. The first group of investment companies, after the reception and as long as are listed on the stock exchange, Cannot change the investment objectives and policies defined in its statutes. Changing the statute requires re approval in stock.
- 2- All listed companies are required that adapt their state and the name of their company to this privacy regulations until the end of 2005.
- 3- CEOs and board members management of investment companies that do not meet the provisions of these Regulations, will be included "Privacy Regulations executives of listed companies on the stock exchange". Article 4 of Appendix 4 to accept instructions in Tehran Stock Exchange.

3.3 A summary of the legal conditions governing the holding activities in the country.

Observing some of the requirements that come follow are necessary to in case of registration of the mother company (Holding) with the securities and exchange and if the Holding is exempt from registration with the securities and exchange, will not be subject to the terms:

- Holding are example of financial institutions (Article 4 Regulation securities market Act)
- Financial institutions, including the holding must be registered with the Securities and Exchange. (Paragraph h of Article 99 of the Law of the fifth five-year plan).
- Financial institutions, including holding companies to register with the Securities and Exchange must be registered with the organization to meet their conditions. These institutions, based on the circumstances, may be exempt from registering with the organization, excluded from the obligation to register with the organization and or from activity as a financial institution will resign. (Notice of exemption with the parent company (holding) filed with the Securities and Exchange and minimum capital of this type of financial institutions and guidelines for identification and registration of financial institutions operating in the securities market with the Securities and Exchange Organization).
- Registration of Real Estate is required to register holding only with permission of the Securities and Exchange. (Paragraph h of Article 99 of the Law of the fifth five-year plan).
- Professional qualifications of board members and directors of the company must be approved by the Securities and Exchange.

The professional competence means having academic and empirical scientific records management and is good record management activities associated with the trained administrator. (paragraph H of Article 99 of the fifth five-year plan, Article 29 securities market act, Article 13 the development of new financial instruments and its regulations).

- Minimum capital, activity topic in the statute, reporting method and the kinds of special report audit financial institutions such as Holdings must be approved by the securities and Exchange. (Article 29 securities market act).
- Any changes to the statutes and capital Holdings subject to the approval of the securities and exchange are according to the relevant regulations. (paragraph H of Article 99 of the fifth five-year plan).
- If a legal person previously as a financial institution has not been registered with the Securities and Exchange Organization, ascertains the terms as financial institutions is required to apply in writing from the securities and exchange to be registered with the organization as a financial institution subject to suit their activity and it may be known as a mother company based on the relevant criteria (paragraph 2-4 of Article 5 guidelines for identification and registration of financial institutions operating in the securities market with the securities and exchange).
- Establishment of financial institutions, including the holding is subject to registration with the Securities and Exchange Organization and their activities are conducted under the supervision of the organization. (Article 28 securities market act).

In general, the establishment of holding companies, in particular, need to pay attention to some legal obstacles: In commercial law, the definition of holding companies has not been presented that this would violate the rights of Company shareholders.

3.4 The future of Holding

In next years the number of Holdings will increase because experience has shown that Holdings because of using of human resources specialist, can well manage their subsidiaries and this good management, reduce the cost of the subsidiaries. Especially with the lifting of sanctions and increased foreign investment, space for holding activities are much better (Sadri and Moazzenzade, 2014).

4. Conclusion

4.1 Results and presenting the suggestion.

- The holding company, legal entity that in order to achieve their goals, take all or part of the shares of companies that are active in a series and manage collection companies under their coverage using strategic management.

Every major company which has several subsidiaries or dependent is not holding. Based on the paragraph 22 of the article 1 of the securities market act, mother company or holding is a company that with the investment in the investee company to earn profit, so earns the right to vote to select board members, so that control the operations of the company, or in the selection of board members to be effective.

In relation to the definition of the holding company, because of the lack of explicit legislative legislator, in this area, not provide a comprehensive definition. In securities market act which is about the definition of holding and mother company have not placed a difference between the holding and mother company and according to that holding companies are called mother company but it seems that this definition is comprehensive.

holding company: A company that more than 50% of the assets of a legal person that is dedicated to Exchange, invested in stocks, shares or the firm's investment units, institutions or funds, Whereby this investment, legal person alone or together with persons under their control in the company, institution or investment fund have considerable influence or gained control (Significant influence, usually takes place by selecting at least one member of the board of directors (the other organs of governing similar but may also result from relations or other contracts that allow investment unit to effectively participate in policy).

Perhaps it can be said that the most important legal documents for licensing the establishment and operation of the parent company are as follows: Securities Market Act and its implementing regulations, the statute of parent companies (holding), approved guidelines of professional managers of financial institutions.

- The holding company, before registration in the Companies Registration Office, should obtain license from the Securities and Exchange and must be in the form of joint stock companies or the public; and to start its activities, the declaration and statutes delivered to the Companies Registration Office and the mandate and description of its activities with sentences like any commercial activity is allowed, begin. The weakness of the Commercial Code and lack of legal basis for large companies and unclear holding legal status in our country rules are legal challenges that the holding companies are facing.

According to the current research findings, suggestions are as follow:

- 1- To reforming commercial law, in addition to specialized lawyers have a team of certified public accountants society representatives, representatives of the Stock Exchange, Representative Corporate Audit, Audit Court representatives are also active in this process because this law doesn't define the scope of the trade for all enterprises and economic entities and it can't be merely considered for a corner.
- 2- A comparative study of the laws of holding companies with other countries and provide successful models could be helpful in this regard.
- 3- Contribute to the conclusion of legal agreements, based on the rule of law in Iran, to grant legal representation and protection of interests of the owner of the brand in the country.
- 4- Reforming the law appropriately and based on the requirements of time to predict a reference that investigate to the claims of corporations and shareholders. A shareholder who claim the loss before the convention, if can't get in front of the convention and its regulatory approvals through a judicial authority, other shareholders will form the convention and will take some decisions sources and references. Therefore, the amendment to the trade law courts, prediction and selection of judges is based on certain guidelines that judgment of this court is familiar with the legal bases.

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